

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 239 of 2001

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. D.S.SINHA
and
Hon'ble MR.JUSTICE J.M.PANCHAL

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements? Yes
 2. To be referred to the Reporter or not? Yes :
 3. Whether Their Lordships wish to see the fair copy : YES
of the judgement? Seen
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No
 5. Whether it is to be circulated to the concerned No :
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

MAFATBHAI V SHAH

Versus

SECRETARY, GOVT. OF INDIA AND ORS.

Appearance:

1. Special Civil Application No. 239 of 2001
MR MAFATLAL V SHAH Party in-person.
MR SN SHELAT, ADVOCATE GENERAL WITH MR SN THAKKAR,
ADDITIONAL CENTRAL GOVERNMENT STANDING COUNSEL,
for Respondents
-

CORAM : THE CHIEF JUSTICE MR. D.S.SINHA
and
MR.JUSTICE J.M.PANCHAL

Date of decision: 20/08/2002

ORAL JUDGEMENT

(Per : THE CHIEF JUSTICE MR. D.S.SINHA)

Heard Mr. Mafatbhai V.Shah, the petitioner appearing in-person, and Mr. S.N.Shelat, learned Advocate General appearing for the respondents, at length and in detail.

2. The petitioner, a retired Official Liquidator, by means of instant petition under Articles 226 and 227 of the Constitution of India, founded on half-baked information, and which is, in the opinion of the Court, a classic instance of the grossest abuse of public interest litigation jurisdiction of the Court, prays for the following reliefs :-

"(a) The Hon'ble court may direct respondent No.3 to file statement of accounts in prescribed form No.48 with regards to all companies in liquidation with register of companies by 31st December, 2001.

(b) The Hon'ble court may direct respondent No.3 to invite investigate and settle list of creditors and file the same in this Hon'ble court and file the list of debts and claims along with the proofs of debts by 31st December, 2001.

(c) The Hon'ble court may directs the respondent No.3 to file original copies of statement of affairs as required under rule 127 in the original side of the Hon'ble court by 31st December, 2001."

3. So far as reliefs (d), (e), (f), (g), (h) & (j) are concerned, the petitioner states that they are not pressed.

4. It is to be noticed that in support of the reliefs (a), (b) & (c), pressed by the petitioner, there is no factual foundation in the petition. The cluttered and clumsy pleadings in the petition are wholly frivolous, misconceived and vexatious. The factual stand of the respondents, relevant in the context, as disclosed in the 'Further Affidavit' of Mr. Mahesh Ambalal Kuvadia, filed on behalf of the respondents, is to be found in Paragraphs 5, 6 & 7. Paragraph 5 of the said Affidavit, which deals with prayer (a), is as under :-

"5. I further submit that in so far as prayer

(a) of the said petition is concerned, whereby the petitioner has sought the directions of this Hon'ble Court for filing Statement of Accounts as required to be filed under Sections 462 and 551 of the Companies Act, 1956 in the prescribed Form with regards to the Companies in Liquidation, I state and submit that the office of the Respondent No.3 has regularly complied with the said statutory provisions as contained in Section 462 of the Companies Act and it is a matter of records that the said half yearly statements are got duly prepared by Chartered Accountant are being filed in the prescribed Form with the Hon'ble High Court."

Paragraph 6 of the affidavit which deals with prayer (b), runs as under :

"6. Further, so far as prayer (b) is concerned, the petitioner has sought a direction that the Respondent No.3 should investigate and settle the list of creditors and file the same before this Hon'ble Court as well as the list of the debts and claims alongwith the proof of the debts. In so far as the said prayer is concerned, I submit that the petitioner appears to be harboring a mistaken impression that the said procedure is not being followed with by the Respondents. It is most respectfully submitted that as a matter of fact, the respondent is complying with the requirements of provisions of the Companies Act, 1956 and Companies (Court) Rules, 1959. On realization of the assets and properties, the claims are submitted by the secured creditors and workers union to the Official Liquidator and the same are got investigated by the Chartered Accountants with the prior sanction of the Hon'ble High Court. After adjudication of claims of the secured creditors and the workers, the same are submitted before the Hon'ble High Court. Thereafter the final order

for settlement of dues of the secured creditors and workers is passed. Thus the petitioner is not justified in making grievances with regards to the same. It is submitted that the office of the Respondent No.3 has settled the payment of dividend to secured creditors and workers on pro-rata basis in case of numerous companies and as is evident from the article published in Labour Law Journal for the month of May, 2002, a copy thereof is annexed hereto and marked as Annexure-II. I submit that as per the said report itself, the workers of 26 Textile Mills have been paid their dues. Also annexed hereto and marked as Annexure-III is a copy of the letter dated 14.2.2002 issued by the authorized representative of the Textile Labour Association, expressing satisfaction with the working and cooperation of the office of the Official Liquidator. I, therefore, submit that the petitioner has not cited even a single instance of inaction on the part of Respondent No.3, whereas as a matter of fact, the Respondent No.3 has discharged his responsibility as Liquidator upto the entire satisfaction of all secured creditors/workers and this Hon'ble Court and no one in this regard has ever made any complaint.

Relief (c) has been dealt with in paragraph 7 of the affidavit, which is as below :

"7. So far as the prayer (c) is concerned, I submit that the petitioner has sought a direction that the Respondent No.3 should file the copies of the statement of affairs in accordance with Rule 127 of the Companies (Court) Rules, 1959, I submit that the said Statements of Affairs which have been filed by the concerned Ex-Directors of the Companies (in Liquidation) with the office of the Respondent no.3, are being filed before the Hon'ble High Court. I also state that in case where the statement of affairs has not been filed by the Directors/Ex-Directors, Criminal complaint

have been filed by the office of the Respondent No.3 against the said Ex-Directors. I submit that in all 48 complaints have been filed against the Ex-Directors of such companies during the period 1999-2002 and I crave leave to refer to and rely upon the said details at the time of hearing of the petition."

5. Relief (a) appears to be founded on the statutory provisions of Section 551 of The Companies Act, 1956, hereinafter called 'the Act', read with Rule 311 of the Companies (Court) Rules, 1959, hereinafter called 'the Rules', and Form 148 prescribed for filing the Annual Statement by the Official Liquidator under Section 551 of the Act. Section 551 of the Act obligates the Official Liquidator to furnish information with regard to the pending winding-up proceedings of a Company to the Court, in the case of a winding-up by or subject to the supervision of the Court, and to the Registrar, in the case of a voluntary winding-up. The petition does not give details of any Company in respect of which the winding-up proceedings are pending, and the Form is not submitted. The material facts and particulars required to be furnished are sadly lacking. In the absence of relevant data of the requisite information on record, it is difficult to appreciate the grievances of the petitioner, and to grant the prayers made by him. Otherwise also, from the facts stated in the 'Further Affidavit', filed on behalf of the respondents, it is clear that the statutory requirements and obligations of the respondent No.3 are being fully discharged.

6. Relief (b) claimed by the petitioner is for a direction to respondent no.3 to invite, investigate and settle list of creditors. The relevant statutory provisions, in this regard, are to be found in Section 474 of the Act, and Rule 174 of the Rules. A conjoint and meaningful reading of the provisions of Section 474 of the Act and Rule 174 of the Rules makes it absolutely clear that the function of investigation and settlement of the list of the creditors is assigned to the Court, and the Official Liquidator, respondent no.3, does not come in picture. He has only to act in accordance with the directions given by the Court. Thus, relief (b) is utterly misconceived.

7. By relief (c), the petitioner urges the Court to direct the respondent no.3 to file original statement of affairs, as required under Rule 127 of the Rules, in the

original side of the Court. Section 454 of the Act, when read along with Rule 127 of the Rules, indicates that the requisite statement has to be submitted to the Official Liquidator by the Director of the Company in respect of which a winding-up order has been made by the Court. Upon such submission by the Director of the Company, the Official Liquidator is to forward the statement to the Court. Obviously, unless the Director of a particular Company files the statement, the Official Liquidator, respondent no.3, would not be in a position to forward the same. No particulars of the relevant Company or Companies in this regard are to be found in the petition. Therefore, relief (c) also cannot be granted to the petitioner.

8. In the opinion of the Court, the anxiety of the petitioner, who professes to be protector of public interest, seems to be that the office of the Official Liquidator, held by the respondent no.3, which was once held by the petitioner himself, should be run in a manner which he perceives to be right. The grievances based upon his misconception of the affairs of the office of the Official Liquidator, are wholly devoid of substance. The petitioner, who appears to be merely a busybody, has arrogated to himself the role of overseer and watch-dog of the functioning of the respondent No.3, and abused the machinery of this Court by invoking the special and extraordinary jurisdiction of this Court through this petition, which is nothing more than a mass of confusion. His unworthy action has resulted in wholly unjustified and uncalled for harassment of the respondents, particularly the respondent no.3. It is a fit case where the Court ought to impose costs to prevent the abuse of the process of the Court, as has been done in the instant case. Accordingly, the petition is dismissed with costs quantified at Rs. 5,000/- (Rupees Five Thousand only) to be paid by the petitioner to respondent no.3, within a period of three months. Notice is discharged.

9. No orders on Civil Application Nos.11064/2001 and 11065/2001.

(D.S.Sinha, C.J.)

(J.M.Panchal, J.)

(patel)